

## DID THE SAN REMO CONFERENCE ADVANCE OR UNDERMINE THE PROSPECTS FOR A JEWISH STATE?

**As a Jew, I wish that the resolution signed 100 years ago had been what today's celebrants claim it was. As a historian of Israel, I must report that it was much less.**

December 1, 2020 | Martin Kramer

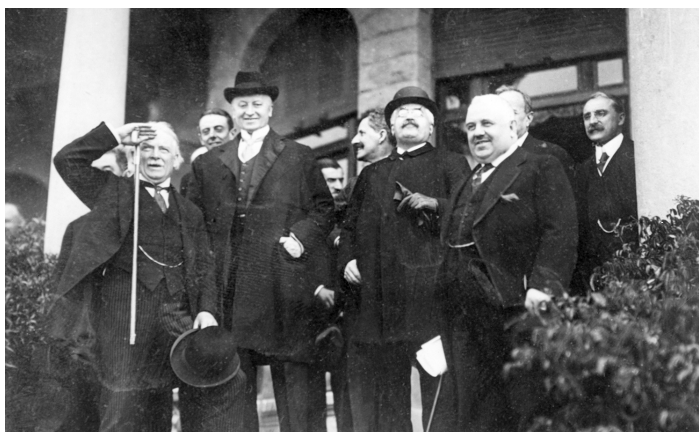
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Three years ago this month, Israel marked not one but two major anniversaries: the centennial of the Balfour Declaration, announcing British support for a Jewish national home in Palestine (November 2, 1917), and 70 years since the UN General Assembly partition resolution calling for separate Jewish and Arab states in Palestine (November 29, 1947). Both are widely recognized as landmarks on the road to Israeli independence.

This year, though, we've been told by Zionist organizations, Israeli officials, and political activists that we should really be celebrating a different date entirely: namely, this year's centennial of an international conference held in San Remo on the Italian Riviera in late April 1920. At that conference, a sequel to the post-World War I Paris peace conference of 1919, Britain and France (along with Italy and Japan) agreed on the division of the post-Ottoman Levant and Mesopotamia into League of Nations mandates.

As any glance at an Israeli calendar shows, this event is not something that's usually been commemorated. Is it nevertheless really the case, as some insist, that San Remo was and remains *more* important to Israel's legitimacy than the Balfour Declaration and the UN resolution? Advocates of this idea say things like this:



Prime Minister Lloyd George and Earl Curzon of the United Kingdom, Prime Minister Alexander Millerand of France, and Prime Minister Francesco Nitti of Italy at the League of Nations Peace Treaty Conference in San Remo on May 13, 1920. *Getty*.

- At San Remo, “the title to Palestine was given to the Jewish people.”
- The San Remo agreement is “the best proof that the whole country of Palestine and the Land of Israel belongs exclusively to the Jewish people under international law.”
- “San Remo explains why Israel’s borders include Judea and Samaria.”

Indeed, in the judgment of one pundit, so important is San Remo that the street in Jerusalem named for the 1947 UN resolution—it’s called the 29th of November Street—should be renamed for the San Remo accords.

A reasonably informed supporter of Israel could be excused for not knowing any of these claims—and for good reason, since none of them is true. That doesn’t make San Remo any the less interesting, but its real significance lies in the opposite direction: in, to be precise, Britain’s history of imperial self-dealing, which at San Remo and as a consequence of San Remo nearly undermined any prospect of a Jewish state.

**Some background:** the remnants of the Ottoman empire in the Fertile Crescent were divided at the San Remo conference into two zones, one British and the other French. The Sykes-Picot agreement of 1916 had already done this informally. Four years later, the San Remo conference did so in a formal agreement subsequently ratified in 1922 by the League of Nations, which also granted mandates over the respective territories. The mandates for Iraq and Palestine went to Britain; the one for Syria and Lebanon went to France.

The principal difference from the Sykes-Picot plan concerned Palestine. In 1916, the British and French couldn’t agree over who should get it, so they resolved to share control. In 1920, at San Remo, the French formally yielded to the British insistence on exclusive control of Palestine in return for exclusive French control of Syria.

To help justify its solo mandate, Britain also insisted on including, within its preamble, the text of the recent Balfour Declaration of 1917 in which Britain “viewed with favor the establishment in Palestine of a national home for the Jewish people.” Eventually, expanding on Balfour, the mandate would also invoke the Jews’ historical connection to the land and recognize their right to settle it “closely.”

These provisions were hailed as a triumph for Zionism. There were only about 80,000 Jews in the whole country, yet here came the League of Nations, a world body, to recognize the Jewish people’s historical right to its “national home.” The British Zionist leader Chaim Weizmann, widely regarded as having single-handedly secured the Balfour Declaration, openly took credit for this victory as well. Once back in London from having personally worked the halls at San Remo, he announced to the British Zionist Federation: “We stand before you with a declaration of independence in our hands, the independence of Eretz-Israel and the Jewish people.”

**As against** Weizmann’s triumphalism, other leading Zionist figures harbored serious doubts about San Remo. In particular, they focused on the phrase “national home,” brought over

from the Balfour Declaration, and the failure of Zionist diplomacy to achieve something more substantial than that. The phrase may have been good enough for the Declaration, which was not a legal but a moral statement. In fact it had been coined by the Zionists themselves (in the person of Nahum Sokolow) precisely because of its helpful ambiguity, which would make such a declaration easier to secure. San Remo's job, by contrast, was to produce a binding legal commitment, and there Zionists had pushed in vain for a British mandate that would promise a "Jewish commonwealth"—that is, a state.

It was Ze'ev Jabotinsky, the future leader of Revisionist Zionism, who saw the consequences most clearly. The term "national home," he said, "lacked precision," and by now "its vagueness has been universally recognized." Nevertheless,

the tenacity with which the term has been retained in the [San Remo] draft betrays a deliberate intention to leave wide margins for interpretation at the discretion of the Mandatory Power. . . . I need not elaborate the truism that any principle of a constitution (especially if couched in vague terms) can be rendered inoperative by a willful administration.

The Zionist thinker [Ahad Ha'am](#) pointed to exactly the same problem:

When the British promise was confirmed at San Remo, we began once more to blow the messianic trumpet, to announce the "redemption." . . . But essentially it added nothing, and the text of the earlier promise [i.e., Balfour] remains absolutely unaltered. . . . Everything, therefore, depends on the good will of the [British] "guardian," on whom was placed at San Remo the duty of giving the promise practical effect. Had we paid attention to realities, we should have restrained our feelings and waited a little to see how the written word would be interpreted in practice.

It's not that Jabotinsky and Ahad Ha'am saw no progress at all in San Remo. Jabotinsky thought that "from the strictly juridical point of view, these clauses of the mandate give us a base for defending our claim against eventual attempts at a restrictive interpretation." For his part, Ahad Ha'am noted that the mandate raised the Balfour Declaration "to the level of an international obligation, and from that point of view it is undoubtedly of great value."

But, for them, these considerations couldn't obscure the fact that at San Remo, Palestine had been given not to the Jews but to the British. Previously, Britain had been in Palestine by conquest. Now British rule enjoyed the full recognition of Britain's wartime Allies, soon followed by the League's grant to Britain alone of "full powers of legislation and of administration, save as they may be limited by the terms of this mandate." The British made sure that those terms left them ample leeway to interpret the "national home" obligation as they saw fit.

**Of equal moment**, but less known at the time, was the fact that San Remo also upgraded Arab rights in Palestine.

The Balfour Declaration had famously included a sentence qualifying British support for a Jewish national home—namely, that "nothing shall be done which may prejudice the civil and

religious rights of existing non-Jewish communities in Palestine.” Some interpreted this passage as conferring superior rights on the Jews. The Jews, that is, were to enjoy national and political rights, whereas the “non-Jewish communities”—read: the Arabs—were accorded lesser “civil and religious rights.” To many Zionists, this was a virtue of both the Declaration and the mandate. For the same reason, Arabs and other anti-Zionists denounced both documents.

This is why, till today, British governments have felt the need to apologize for this part of the Balfour Declaration. To take one recent example: on the occasion of its 2017 centennial, then-Foreign Secretary Boris Johnson told the House of Commons that its drafters “should have spoken of the political rights” of the Palestinian Arabs.

At San Remo, however, both Britain and France had already gone a step farther, agreeing between them that “civil rights” *included* political rights. This is revealed in the (French) record of the deliberations.

Britain’s main goal at San Remo was to cut the deal that would keep Palestine for the British alone in exchange for giving the French exclusive writ over Syria. During the negotiations, however, while the Zionists were pressuring the British to upgrade their commitment to the Jews, the French sought to water it down. Lord Curzon, the British foreign secretary, thought to put off both sides by the simple device of importing the Balfour Declaration into the mandate “as is.” But French Prime Minister Alexandre Millerand, who headed his country’s delegation, had other ideas.

Latching on to the Declaration’s concern for the “civil and religious rights” of non-Jews, Millerand insisted that this was inadequate: “I urge that these rights include political rights as well as civil and religious rights.” Curzon balked: “I have undertaken not to modify anything in the Declaration.” Millerand: “In French, the words ‘civil and religious rights’ do not include ‘political rights,’” so perhaps the text should simply say “rights.” Curzon: “I cannot accept this suggestion because it would imply a change in the terms of the Declaration.”

There then followed this exchange:

*Millerand:* So I ask that it be formally heard and entered into the record that “civil and religious rights of non-Jewish communities” includes in the minds of the British government, as in ours, *political*, civil, and religious rights.

*Curzon:* I don’t understand the difference between civil and political rights. In English, the word “civil” also refers to political rights. Besides, I have no objection to Mr. Millerand’s statement being included in the minutes. . . .

*Millerand:* I agree; I personally accept the [Balfour Declaration] text proposed by the British delegation as long as it is understood that nothing has changed in the current situation of non-Jewish communities in Palestine.

*Curzon:* Exactly.

This was the price exacted by France for allowing the Balfour Declaration to enter international law. By mutual agreement, the powers recognized the political rights of the Arabs of Palestine under the rubric of (the English meaning of) “civil rights.”

Two weeks after San Remo, Millerand related its outcome to the commander of French forces in the Levant. France, he told him, “had never admitted that Palestine could become a Zionist state or that a Zionist regime could be established in Palestine.” To the contrary, it had always made clear,

in the most explicit way, that Jewish groups would not enjoy any degree of political, civil, or religious rights superior to those of other populations or Christians or Muslims. . . . At the San Remo conference, the explanations exchanged between Lord Curzon and myself left me in no doubt on these points.

Ahad Ha’am immediately reached the same conclusion. While the mandate did include “the recognition of the historic right of the Jewish people to build its national home in Palestine,” it simultaneously “negat[ed] the power of that right to override the right of the present inhabitants and to make the Jewish people sole ruler in the country.”

The spinning of the mandate in the direction of “even-handedness” found another expression in the wording of the mandate itself. While the Zionist draft proposed that the mandate should license the Jews “to reconstitute Palestine as their national home,” the mandate’s final text stipulated only that they were to be allowed “to reconstitute their national home *in* that country” (my emphasis).

The rejection of the Zionist draft owed to Curzon, whose suspicion of Zionism far exceeded his sympathy for it. As he himself wrote,

[W]hile Mr. Balfour’s Declaration had provided for the establishment of a Jewish National Home in Palestine, this was not the same thing as the reconstitution of Palestine as a Jewish National Home—an extension of the phrase for which there was no justification.

So out the “extension” went.

It has been argued that this didn’t matter—that, in the words of the late attorney Howard Grief, champion of the San Remo thesis, “the changes engineered by Curzon watered down the obvious Jewish character of the mandate but did not succeed in suppressing its aim—the creation of a Jewish state.” In fact, it did succeed in suppressing that aim—or would have if that had indeed been the mandate’s aim.

Later that same year, Weizmann complained privately that “so much water has been poured into the wine that I am quite sure there will be great disappointment when the mandate is published.” In 1931, he admitted publicly that “the mandate also includes qualifying clauses which in a way impair the weight of the Zionist provisions.” Those “qualifying clauses” were loopholes the British made for themselves, in anticipation that they might need them.

In sum, the mandate’s interpretation as agreed upon at San Remo added only so much to the Zionist arsenal. And that became clear from day one. Major-General Sir Louis Bols, the chief military administrator of Palestine in 1920, announced the San Remo outcome to the inhabitants of Palestine with this reassurance to the Arabs:

Immigrants will be allowed only as required for the development of the country, and immigration will be controlled by the British Government of the country. . . .

The British Government will govern and in no sense will a minority be allowed to control the majority of the population when the time arrives for any form of representative government.

At the time he issued that statement, Arabs outnumbered Jews nine to one in Palestine.

The following year, Sir Herbert Samuel, the first British civilian High Commissioner, made clear in his report to the League how Britain would interpret the mandate:

The measures to foster the well-being of the Arabs should be precisely those which we should adopt in Palestine if there were no Zionist question and if there had been no Balfour Declaration. . . . The degree to which Jewish national aspirations can be fulfilled in Palestine is conditioned by the rights of the present inhabitants.

This same Herbert Samuel, a British Jew, had been a favorite of the Zionist lobby at San Remo, where he'd cooperated with Weizmann and Sokolow. Yet little more than a year later he could frame "Arab rights" as limits upon Jewish "national aspirations." Truth be told, so vague was the mandate that his interpretation could not be said to have contradicted it.

This became the story of the British mandate. In the very earliest stages, the British interpreted "national home" as allowing Jewish immigration on a scale that might have made the Jews a majority in the fullness of time. Then they reinterpreted it more narrowly: immigration would be limited by the "absorptive capacity" of the country. Finally they reinterpreted it to impose strict limits on immigration, so that the Jews would remain a minority in a predominantly Arab Palestine. They could pivot in this way because "national home," as Jabotinsky said once again in 1937, was an "evasive and elusive term."

**For all of these reasons,** there have always been those Zionists and Israelis who have seen the Balfour Declaration itself, not to mention the San Remo conference, as serving a British scheme—Menachem Begin called it "the British Master Plan"—for seizing Palestine under the guise of support for Zionism.

Britain, Begin wrote in his memoir *The Revolt* (English edition 1951), coveted Palestine for strategic reasons, but it couldn't just annex it. Instead, it adopted a "clever" ruse "to take over control of Palestine without seeming to":

Britain would promise the Jews a Home—in Palestine. Not Palestine as a Home, but a Home *in* Palestine. Britain would have Palestine, and the Jews would have a Home in it. Such a policy would also help British interests in America, for the Jews there had influence. . . . Arabs, when required, would "rebel" against the "foreign invasion"; and the Jews would be forever a threatened minority. Each would have to be protected from the other—by British bayonets. That, roughly, was the flavor of thought underlying the Balfour Declaration. That was how the British mandate was hatched, and how British policy in Eretz-Israel developed.

To Begin's mind, the British at San Remo had dealt themselves Palestine under a League of Nations cover. And the text of the mandate was the clue: the Jews merely got a home *in* (British) Palestine, which the British could restrict as they pleased.

Of course, Begin knew how to play all cards. In 1944 he reproached Prime Minister Winston Churchill for failing to uphold the Balfour Declaration, and in 1977 he even cited the mandate in his reply in the Knesset to Egypt's President Anwar Sadat during the latter's historic visit to Israel. But he clearly believed, as he wrote in *The Revolt*, that both texts had been cunningly crafted to *limit* Zionist rights.

And that brings us to an irony and a curious turn in the spiral: today, some of Begin's heirs, including some quoted at the beginning of this essay, claim that actually the mandate *expanded* Israel's future rights, including even its right to Judea and Samaria.

How so? The argument, pioneered by Howard Grief, goes like this: the mandate enjoined Britain to "encourage . . . close settlement by Jews on the land," and Britain had a mandate for *all* of Palestine. So Jewish settlement anywhere in the land cannot be illegal. Moreover, although in 1947 the UN General Assembly passed a partition resolution calling for a Jewish and an Arab state, it wasn't ever adopted by the Security Council but remained a mere recommendation. Thus, in the absence of a Palestinian Arab state, Israel stands as the sole successor state to the League of Nations mandate, and application of Israeli sovereignty to any territory of the mandate cannot be challenged on legal grounds. (The legal principle invoked here is known as *uti possidetis juris*, "as you possess under law.")

It's an arcane argument. But whatever its legal merits, it's no surprise that Zionists never advanced it during most of the century since San Remo. From Jabotinsky to Ahad Ha'am to Begin, the view prevailed that the Zionists at San Remo failed to get an unambiguous commitment to Jewish sovereignty, and failed to get the entire land designated as the "national home." It wasn't for lack of trying, as the record shows. Unfortunately, however, while the British-crafted mandate recognized Jewish national rights, it didn't concede any Jewish right to interpret them. This right the British reserved to themselves.

Not surprisingly, then, San Remo quickly faded into obscurity. The Jews of Palestine celebrated Balfour Day for years, and for sound reason. In that declaration, Britain made no claim for itself, ostensibly appearing instead as a disinterested friend offering moral support. At San Remo, by contrast, Britain staked its own claim to Palestine. San Remo provided Britain with a license to assimilate the country into an empire that already covered a quarter of the earth's surface, and that country was to be governed according not to Jewish but to imperial imperatives.

In the ensuing decades, both the British and the Jews soured on the mandate, and Jewish resistance to the British percolated. San Remo sank into oblivion. In Palestine, where the name of Balfour appeared on prominent streets in Tel Aviv, Jerusalem, and Haifa, the name of San Remo appeared on a lone beachside hotel in Tel Aviv whose owners intended to evoke not the diplomatic conference but the belle-époque glitter of the Riviera.

Upon Israel's creation in May 1948, its founders situated its international legitimacy within the UN General Assembly resolution of 1947, which explicitly recommended the establishment of a Jewish *state*. True, Israel's declaration of statehood also cites the mandate, specifically for having provided "international sanction to the historic connection between the Jewish people and Eretz-Israel and to the right of the Jewish people to rebuild its National Home." But the crucial line in that declaration refers only to the 1947 action of the UN:

By virtue of our natural and historic right and on the strength of the resolution of the United Nations General Assembly, we hereby declare the establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel.

**So does** San Remo's centennial deserve to be commemorated? It does—and precisely as one more pillar of legitimacy for the state of Israel. But invoking it to legitimate more than that, such as Israeli sovereignty over all of mandate Palestine, is itself a deviation from the past Zionist and Israeli understanding both of San Remo and of the mandate. In that understanding, San Remo left an unfortunate legacy of ambiguity regarding Jewish sovereignty and its extent, an ambiguity that Zionism had to struggle to overcome.

This should be acknowledged—precisely out of respect for the grit of the founders, who perfectly grasped the ambivalence of the “international community” on the matter of a Jewish state. Only in 1947 did the idea of such a state receive any shred of international legitimacy. To think otherwise is to minimize the uphill struggle of Zionism under the British.

Consider this example, from the World Zionist Organization itself. At San Remo, the WZO proclaims in its centennial [video clip](#), the Allies

gave Britain the mandate for Eretz-Israel, with an explicit declaration in favor of an independent Jewish state in the territory. This was the first time in 2,000 years that the world had recognized the idea of Jewish sovereignty in Eretz-Israel.

Alas, not so. Had San Remo conformed to this depiction, perhaps a Jewish state would have arisen before the Holocaust and been able to save millions of European Jews from annihilation. Precisely because San Remo failed to produce an explicit declaration in favor of a Jewish state and Jewish sovereignty, it took almost 30 more years of struggle, and the Holocaust, to elicit that recognition. It came at a steep price in Jewish blood, and even then was issued with the usual proviso that the Arabs were also entitled to a share.

As a Jew, I wish that San Remo had been what today's celebrants claim it was. As a historian, I must report that it was much, much less.

## THE SIGNIFICANCE OF SAN REMO

<https://mosaicmagazine.com/observation/israel-zionism/2021/02/the-significance-of-san-remo/>

### Eugene Kontorovich thinks that the 1920 San Remo conference sits at the foundation of Israel's legitimacy. Martin Kramer disagrees. Who's right?

February 15, 2021 | Eugene Kontorovich, Martin Kramer

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*In December 2020, the historian and regular Mosaic contributor Martin Kramer [asked](#) whether those recently celebrating the 100th anniversary of the 1920 San Remo Conference were justified in seeing it as a cornerstone of Israeli sovereignty. In particular, he found that the historical case for San Remo's importance was overstated, even as he sympathized with the celebrants' impulse to strengthen Israel's legitimacy. Below, we present an exchange between Eugene Kontorovich—another Mosaic contributor and a frequent commentator on international law as it applies to Israel—who writes to dispute Kramer's argument, and a last word in response from Kramer himself. —The Editors*



French Marshal Ferdinand Foch during the San Remo Conference in 1920. Photo 12/ Universal Images Group via Getty Images.

### Eugene Kontorovich: The San Remo Treaty Sits at the Foundation of Israel's Legitimacy in International Law

This spring, I was among those arguing that the centennial of the San Remo conference—where the League of Nations assigned the mandate for Palestine to Great Britain—should be celebrated as a milestone in Israel's pre-history, and remembered alongside the more widely-known Balfour Declaration and the UN General Assembly's stillborn 1947 partition proposal. Martin Kramer recently [criticized](#) this stance, contending that the conference did little to advance the Zionist project of establishing a sovereign state in the Land of Israel. As he mentions with particular disapproval my [suggestion](#) that a street in Jerusalem currently

named in honor of the UN resolution should be redubbed to commemorate San Remo, I thought I'd respond. At stake is more than street signs and civic commemorations festivals. Such engagements with the past, along with the work of careful scholars like Kramer himself, together amount to the reconstruction of Zionism's legal and political history.

Kramer's disagreement centers on the fine points of historical emphasis. He does not claim that the League of Nations' actions were unimportant. Rather, he claims that San Remo was a disappointment relative to the other events.

But first, let's summarize these key events in order. On November 2, 1917, the British foreign secretary, Arthur Balfour, issued his famous declaration that "His Majesty's government view with favor the establishment in Palestine of a national home for the Jewish people." At that moment Palestine was still part of the Ottoman empire, although parts of it had been occupied by Britain, which would go on to conquer the rest in the remaining year of World War I. But only at the April 1920 San Remo conference would the victors in the war—by this time acting under the supervision of the newly created and broadly-based League of Nations—award the territories west of the Jordan River to the United Kingdom. The text of the corresponding "mandate" included phrases from the Balfour Declaration about establishing a Jewish national home there. Finally, in 1947, the United Nations General Assembly voted in favor of dividing parts of the mandatory territory into Arab and Jewish states. The Arabs rejected the suggestion, Israel declared independence, and the rest, as they say, is history.

In one sense, both San Remo and the Balfour Declaration were necessary antecedents to the creation of a Jewish state, which could not have proceeded without both British support and the League's endorsement. San Remo, after all, gave London control of Palestine, without which the Balfour Declaration was meaningless. By this standard, the suggestion of UN General Assembly resolution 181 about modifying the mandate was not a necessary prequel to Israel's creation. Had the UN kept out of the matter, Britain nonetheless would have soon relinquished the mandate, and the Jews of the Yishuv would have had no choice but to declare independence. Even with the UN's nominal support for a Jewish state, the creators of the actual one had to fight for their survival in the face of a debilitating UN arms embargo that clearly favored the already-established and Western-supplied Arab armies. In the absence of Resolution 181, calling for partition of Mandatory Palestine into Jewish and Arab states, Israel would still have had to fight to be born.

**Which brings us** to another vantage point from which to evaluate the significance of these several events: legitimacy. What must be stressed from the outset is the folly of searching through history for an international stamp of approval for Israel's creation. Countries do not require or receive permission for their establishment. They do so either by agreement with the prior sovereign or, more commonly, by success in a contest of arms. No one asks the U.S. or South Sudan what right they have to exist; nor for that matter is this a question for the Hashemite kingdom of Jordan, which was created by codicil in the mandate for Palestine.

To be sure, Abba Eban invoked the UN partition plan as Israel's "birth certificate" while Arab armies poured in from all sides. But his rhetoric did not accomplish anything concrete. From the perspective of international relations, Israel's legitimacy as a sovereign state rests on the same basis as all others: a government established its exclusive control over a territory and

won recognition by other states. It is Israel's successful defense of itself in the War of Independence, at a cost of 1 percent of its entire population, that is the key to its legitimacy, and Yom HaZikaron is the relevant commemoration.

In this sense, responding to attacks on Israel's legitimacy by seeking special tokens of legal or diplomatic approval falls into the trap of the delegitimizers, by conceding that Israel is a state dependent on international sufferance. Moreover, if international institutions somehow birthed Israel, they might retain some tutelary powers. Certainly, Israel would not want to tie its legitimacy to the UN General Assembly, which 45 years ago voted that the very idea of a Jewish state is racist, or for that matter to the UK, which as Kramer shows was backtracking on San Remo even as the ink dried. In this sense, the League of Nations at least can do no further harm.

But it is from the legal perspective that San Remo's significance most clearly dominates. As a matter of international law, neither the Balfour Declaration nor the UN General Assembly vote had any legal significance at all. This is because neither United Nations resolutions nor official statements of the British Foreign Office are recognized sources of international law. The United Kingdom is but one country. As for the General Assembly, its existence and powers stem from the UN Charter, which gives it zero lawmaking power, and certainly not the power to create states or draw borders.

The treaty creating the League of Nations gave the body such powers over territories where Ottoman or German imperial rule had ceased, and it exercised them repeatedly through the mandate system. The San Remo conference resulted in real changes in the international legal order throughout the Middle East, with the creation of a new geopolitical entities, such as Mandatory Palestine, along with other mandatory territories that would become Syria, Lebanon, and Iraq.

Here, Kramer seems to misunderstand the lasting legal significance of the mandate. It does not lie in any particular phrase of the mandate's text, not even in its provisions regarding a "Jewish national home." No provisions in a treaty, or in a declaration by a foreign government, can guarantee Israel's existence as a Jewish national home. If, for example, all the Jews were to leave Israel, it would not be a Jewish state in any meaningful way, regardless of any statements in any international documents to the contrary. Indeed, the point of the language about Jewish rights in Palestine was to allow *immigration and settlement*, which had been greatly restricted by the Ottomans. As Kramer notes, the British quickly took a narrow view of these provisions. But the mandate was supposed to create the *conditions* for the establishment of a Jewish state, not to serve as the basis for its Jewishness once created.

But more fundamentally, the mandate no longer exists. Whatever expressions it uses have absolutely no legal bearing today, any more than do the Crown charters or royal grants establishing American colonies.

**The continued relevance** of the mandate today—and why it is worth remembering—lies in the borders it established. For the past several decades, the central diplomatic question for Israel has not been recognition of its existence, but rather of its borders—and its fear of finding itself with borders that make its survival exceedingly tenuous. The entire Palestinian

issue is largely a debate about whether the 1949 armistice lines constitute Israel's international borders. The mandate provides a clear and definitive basis for establishing Israel's borders, that is, unlike the armistice lines, legally conclusive. The mandate was a distinct geopolitical unit, and its borders included all of Israel in its post-1948 form, the Gaza Strip, and the West Bank; indeed, the notion of the latter two areas as distinct entities simply did not exist at the time.

Under international law, when a new country is established, it automatically inherits the borders of the last top-level administrative unit of that territory. Thus, newly independent post-Soviet states have the precise borders of the preceding Soviet Socialist Republics. States that arose from League of Nations mandates inherit the borders of the mandatory entity, even if the result harms equitable claims of self-determination, as of the Kurds in Iraq. If New Hampshire were to secede from the United States tomorrow, its borders would be those of the present-day state.

Crucially, this has nothing to do with the wording or intent of the mandate itself, including what it says about the issues of civil and political rights, or immigration. Nor does Israel's sovereign claim to the land between the river and the sea, as a matter of international law, rest on the "Jewish national home" language of either the Declaration or the mandate. Rather, Israel, a Jewish state, was the only state established in the territory of Mandatory Palestine, and thus inherits the borders of its predecessor entity. The phrase "Jewish national home" relates to the internal character of the state, and that is something that international agreements cannot guarantee. Lebanon, for example, was intended to be a primarily Christian Arab state. Demographic change has made the Christians a weak minority, but the external borders of Lebanon remain what they were under the French mandate.

Kramer dismisses this point as an "arcane argument." In fact, it is the primary international rule for establishing the borders of countries around the world, and the first principle an international court or arbitrator reaches for. Moreover, the arguments against Israeli control of the West Bank are made primarily in international legal terms—occupation, illegal settlements, and the like—and must be refuted in these terms.

Kramer notes that San Remo did not give Jews superior political rights in Palestine, and unlike the Balfour Declaration, recognized Arab political rights. What this means is that Arabs would enjoy the rights of citizenship in areas ruled by a Jewish-majority state. Jews would not be able to rule over an Arab majority. But given that Israel was never inclined to do so, this hardly seems like a fatal omission.

Kramer also downplays San Remo by pointing out that its language on Jewish statehood, and even immigration, was vague enough to give the British room to implement the mandate in a way that would deny Jewish aspirations. And the British promptly did that in the 1922 White Paper, which greatly limited immigration. As a result of the British policy, two-thirds of those for whom Palestine was designated a "national home" were instead murdered in Europe, making a Jewish majority in the Holy Land much more tenuous.

But it is naïve to think that stronger language in the mandate would have constrained perfidious Albion. Britain's policy was motivated by new and powerful interests in the Middle East. London took the leeway the mandate gave it, and went beyond it. If less leeway were

granted, Zionist protests to British policy might have been even more fervent, but the policy would likely have been the same.

Thus, while we can learn much from Kramer's account of the events at San Remo, and we should certainly join Kramer in lamenting the weaknesses of the mandate—and even more so study the lessons about the fickleness of powerful imperial benefactors—it is this particular conference that, more than any declaration by any country or international body, gave legal backing to the Jewish state's claim to the Land of Israel.

### **Martin Kramer: No San Remo Required**

This past August, the veteran Israeli politician Uzi Dayan, a member of the Knesset from the Likud party, proposed a law establishing San Remo Day as a new national holiday. Marking the anniversary of an April 1920 conference held in the northern Italian resort town of San Remo, the holiday would celebrate a seemingly miraculous—but largely forgotten—event in the annals of Zionism and the founding of the Jewish state. Almost three decades before the state's establishment, at a time when fewer than 100,000 Jews resided in Palestine, the international community supposedly not only recognized the right of the Jewish people to a sovereign state but also recognized that right precisely in all of the territories, including the West Bank, that Israel controls today.

Dayan was hardly alone in his enthusiasm. As I [wrote in \*Mosaic\*](#) in December, other Zionist organizations, Israeli officials, and political activists had similarly rallied behind the effort to boost the San Remo conference—at which Britain and France agreed on the division of Middle Eastern territories conquered in World War I into League of Nations mandates—to a status exceeding that held by the 1917 Balfour Declaration, in which the British government pronounced itself in favor of “the establishment in Palestine of a national home for the Jewish people,” and the 1947 United Nations resolution recommending separate Arab and Jewish states in Palestine.

In this campaign, Israel's past leaders, supporters, and historians (like myself) stand accused of negligence. According to Israel's strategic-affairs minister, Orit Farkash-Hacohen,

Some of the responsibility for San Remo's absence from the public discourse lies with us—Israel and friends of Israel around the world. We neglected to tell the story of this conference time and time again. . . . When we don't tell the story and set the record straight, we cannot expect anyone else to do it on our behalf. If this is the case, we cannot be surprised when people rewrite history and distort it.

But if such a miracle indeed had occurred at San Remo, how is it that, for almost a century until yesterday, Israel's leaders and friends seem to have altogether missed it? As I argued in my piece, that's because they would have thought the notion preposterous.

**So much** by way of introduction. In what follows I'll be commenting on the rebuttal of my argument offered by the legal scholar Eugene Kontorovich, one of Israel's most effective legal

advocates. Together with Avi Bell, he has put forward cogent and persuasive defenses of many Israeli policies wrongly deigned by critics to be illegal. But with all due respect, the significance he attributes to San Remo is a bridge too far.

To his credit, Kontorovich advances a narrower claim than most San Remo celebrants. Eschewing the question of whether the 1920 conference issued a license for a Jewish state—states aren't born that way, he emphasizes, and in any case, irrespective of San Remo, Israel now exists and enjoys widespread recognition by other states—he also rightly underlines “the folly of searching through history for an international stamp of approval for Israel's creation.”

This puts him in clear opposition to the likes of the late Jerusalem-based attorney Howard Grief, who in calling the San Remo resolution “the basic constitutional document of the state of Israel under international law” went so far as to suppose that a state could acquire its legitimacy decades before its birth, in a document that didn't mention it, written by parties that didn't even envision it.

For Kontorovich, by contrast, the “lasting legal significance” of San Remo lies elsewhere. The conference, he writes, gave rise to the British mandate for Palestine, and while Palestine's borders weren't set at San Remo, the mandate borders themselves were set a few years later. Therefore, Israel, as the only sovereign state to arise within that territory upon the 1948 dissolution of the mandate, is entitled to all of it by international law.

In my *Mosaic* article I cited this claim and pronounced myself agnostic as to its legal merits. But I also pointed out that Israel itself never advanced it. Why? That is the historical (not legal) question that lies at the heart of my remarks here. Why *didn't* the pre-state Zionist movement, and then the state of Israel, regard the mandate as a title either to its sovereignty or to the eastern border of Palestine set by the British mandatory authority?

The part of this question that is about sovereignty can be answered simply enough: as I've already shown, in the view of pre-state Zionist leaders, the League of Nations mandate failed to recognize the Jewish right to a state; the [first glint](#) of international recognition would come only with the UN General Assembly resolution of 1947, mentioned above, calling for the founding of two separate states, Jewish and Arab, in Palestine. That's why the UN resolution features prominently in Israel's declaration of statehood of May 14, 1948. As for the part regarding borders, the answer is just as simple: in 1948-49, Israel avoided committing itself to any borders at all. That included both the partition-plan borders and the mandate borders.

In an earlier [article](#) at *Mosaic*, I demonstrated how David Ben-Gurion took great pains to assure that Israel didn't commit itself to the partition-plan borders in the act of declaring independence. He cut a reference to those borders from the draft declaration, and argued successfully against legal experts in his own cabinet who thought that Israel couldn't be declared without borders. Ben-Gurion preferred that Israel's territory be carved out in war, and that its map be written by fighting Jews.

What isn't often realized is that Israel didn't commit itself to the mandate borders, either. The state of Israel, once established, chose not to regard itself as having inherited its sovereignty from the Palestine mandate. To do so would have meant assuming the customary treaty and contractual obligations of a successor state; instead, the state held that it was an entirely new entity, established by its own Provisional Government, filling territory the British had vacated

without any transfer of authority. (Nor did Israel automatically confer its nationality on inhabitants who had held mandate nationality within its territory, lest it be obligated to accept the “right of return” of Arab refugees.)

Above all, Israel did not recognize any of the borders of the mandate. The independence war ended in 1949 with Israel committed solely to armistice demarcation lines with neighboring Arab states. Even where these followed the previous borders of the mandate, they were treated not as borders but as armistice lines, “not to be construed in any sense as a political or territorial boundary.” (The caveat appears in the armistice agreements with Egypt, Jordan, and Syria.) Any neighbor who wanted to finalize a border with Israel would have to make peace. In 1949, Israel’s foreign minister did describe the defunct mandate borders as “natural frontiers,” that is, a basis for negotiation, but not as borders.

After the Six-Day War of 1967, when Israel built settlements in the conquered territories of the Egyptian Sinai and the Syrian Golan Heights, both clearly outside the former territory of the Palestine mandate, Israel’s position remained that its security, not state succession, should form the basis of its final borders. In 1967, the UN Security Council confirmed Israel’s right to “secure and recognized borders,” without reference to the defunct borders of mandate Palestine, one of which, in particular, was and is regarded by Israel as inherently insecure: that between the mandates of Palestine and Syria. Obviously, were the principle of state succession to be accorded primacy, the Golan Heights would be forever Syrian, and their annexation by Israel would be illegal.

**In short**, the idea that Israel somehow “inherited” its borders from the mandate is entirely new, and was invented only recently to meet a newly perceived need: first to counter the claim that Jewish settlements in the West Bank since 1967 are “illegal under international law,” and second to buttress the case for applying Jewish sovereignty over parts (or all) of the West Bank. “Remember San Remo” has become the shorthand for this argument, even though the 1920 conference settled neither the matter of Jewish sovereignty nor the mandate borders.

In his reply to me, Kontorovich seems to think that he and like-minded others can persuade some part of world opinion that San Remo, dusted off, will strengthen Israel’s legal case. Much as I respect Kontorovich’s able efforts, however, legal arguments of this kind haven’t had much effect on world opinion.

Shurat HaDin is an organization that mounts sophisticated legal defenses of Israel. Last year, Nitsana Darshan-Leitner, its founder, rendered this [verdict](#) on the weakness of the San Remo argument:

Relying on San Remo is not the best strategy Israel should adopt, because people don’t really care about the legal argument. Maybe it’s good in court, but you can’t really bring it up in the public arena or diplomatic world.

Instead, she argued, “Israel has to base its rights to the Land of Israel on our historical, religious, and moral rights to be here, and not on signed documents.”

This is exactly what I was asserting when I wrote in *Mosaic* that the legal argument is “arcane”—a word that is defined by the dictionary as “understood by few.” Kontorovich

reproaches me for it, but I will risk provoking him by going still farther. In my view, the San Remo argument, in linking Israel's territorial claims to proceedings conducted by imperial powers in pursuit of their own self-aggrandizing interests, may well *damage* the Israeli case.

Let me explain: in [an earlier essay](#) for *Mosaic* I refuted the idea that the 1917 Balfour Declaration was a "colonial" document. Rather, it was an ostensibly disinterested statement of support for legitimate Jewish national aspirations, and an early form of public diplomacy. Not so the San Remo resolution, which finalized the postwar carve-up of the Middle East between the British and French empires, behind the flimsy façade of the League of Nations.

At San Remo, Palestine was pocketed for Britain by Lord Curzon, a former viceroy of India who was aptly described as "the symbol of [British] empire in its noontide splendor." San Remo likewise evokes imperialism at noontide, and relying on it in 2021 is almost self-discrediting. Indeed, that's my main disagreement with the San Remo celebrants. As Darshan-Leitner suggests, the most potent arguments against Israel's "occupation" aren't legal, they're moral. Their whole thrust is to suggest that the "occupation" is "the only remaining colonial phenomenon in the world," and that Israel itself is a relic of colonialism.

So just whom is San Remo supposed to persuade? On the one hand, I can't imagine a pro-Israel Jewish student on a "woke" American campus embarrassing himself by citing San Remo in defense of Israeli sovereignty over settlements. Nor, on the other hand, can I imagine a European parliamentarian changing her mind about the supposedly illegal character of Jewish settlements after learning about the imperial machinations at San Remo. As for Israel's Asian friends, from the United Arab Emirates to India, they might well wonder: if this is Israel's main argument to dispel the stigma of "occupation," then maybe its settlement policy really is the last gasp of colonialism.

Whom else, then? If the answer isn't clear, then perhaps the founders of Israel were right to forget San Remo. Clearly, they didn't believe that a miracle happened there; if they had, a San Remo Day would have been established long ago. Instead, they made their miracle happen in Tel Aviv on May 14, 1948, the day that marks the birth of Jewish sovereignty.

Ever since then, sovereign Israel has insisted on its right to maintain whatever borders it requires to rest secure. Given its rising standing in more and more capitals in the "international community," that's an argument that seems to be working just fine. No San Remo required.